



**MICHAEL A. CARDOZO**  
*Corporation Counsel*

**THE CITY OF NEW YORK**  
**LAW DEPARTMENT**  
100 CHURCH STREET  
NEW YORK, NY 10007

**PHILIP S. FRANK**  
*Assistant Corporation Counsel*  
Room 3-183  
Telephone: (212) 788-0893  
Facsimile: (212) 788-9776  
[pfrank@law.nyc.gov](mailto:pfrank@law.nyc.gov)

May 7, 2008

**Via Facsimile (212) 297-0777**

Steven L. Kessler, Esq.  
122 East 42<sup>nd</sup> Street, Suite 606  
New York, NY 10168

Re: Mark Kapiti v. Raymond W. Kelly, et al., 07 Civ. 3782 (RMB) (KNF)

Dear Mr. Kessler:

I am an Assistant Corporation Counsel in the Special Federal Litigation Division of the New York City Law Department assigned to the defense of the above-referenced matter on behalf of defendants City of New York, Police Commissioner Raymond W. Kelly, and the Property Clerk of the New York City Police Department. In that regard, I write to address several outstanding issues related to the instant litigation. First, I write regarding plaintiff's request to depose a fact witness. As background, during a telephone conversation, you advised ACC David Hazan that you could not identify a proper fact witness without more detailed responses to plaintiff's interrogatories. After further review of defendants' responses and objections to plaintiff's interrogatories, it is defendants' position that their responses are proper. Nevertheless, while it is impossible to know what facts plaintiff seeks from potential fact witnesses, in order to expedite matters in this litigation, upon information and belief Sergeant George Triffon has knowledge of some of the facts surrounding the release of the 2006 Acura MDX, VIN: 2HNYD18666H516660 to Honda. Defendants reserve the right to use all witnesses named in their disclosures made pursuant to Federal Rule of Civil Procedure 26(a) to support their case.

Kindly advise me, as soon as possible, dates when you are available for depositions and who you intend to depose.

Additionally, I write in response to plaintiff's letter to this office, dated April 28, 2008, wherein plaintiff advised that he is available to be deposed on May 15, 2008 at 10:30 a.m. Accordingly, defendants write to confirm that defendants will take the deposition of plaintiff Mark Kapiti at the Office of Corporation Counsel of the City of New York, located at 100 Church Street, New York, New York 10007, on May 15, 2008, beginning at 10:30 a.m., and

continuing from day to day thereafter, or upon such adjourned date as may be agreed upon, until concluded. Defendants note that plaintiff was previously noticed to be deposed on October 9, 2007 and January 23, 2008, but could not attend the deposition on those dates.

Finally, I write to memorialize a representation made by you during a telephone conversation with ACC David Hazan, on April 16, 2008. It is my understanding that during the course of the conversation with Mr. Hazan, you represented that although plaintiff named Angel Toledo as a witness in his disclosures made pursuant to Fed. R. Civ. P. 26(a), dated October 18, 2007, plaintiff will not call Angel Toledo as a witness to support his case at trial. Based upon this representation, defendants will not depose Angel Toledo. If this is not your understanding of the conversation then please clarify your representations immediately.

Thank you for your cooperation with these matters.

Yours truly,



Philip S. Frank  
Assistant Corporation Counsel  
Special Federal Litigation Division

cc: **Via Facsimile (212) 972-3329**

Michael A. Rosenberg  
Attorney for Third-Party Defendant American Honda Finance Corporation  
122 East 42nd Street, Suite 606  
New York, NY 10168